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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegations of Argentina, Canada, Chile, Iceland and New Zealand)

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The Parties to this Convention

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

(a) "international conservation and management measures" means measures to conserve or manage one or more straddling fish stocks or highly migratory fish stocks on the high seas that are adopted and applied in accordance with the principles of international law as reflected in the United Nations Convention on the Law of the Sea and, in particular, such measures adopted or approved by regional or subregional fisheries conservation organizations or under regional fisheries conservation arrangements;

(b) "exclusive economic zone" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and includes 200-nautical-mile fishing zones;

(c) "fishing vessel" includes any ship or boat or any other description of vessel used in or equipped for:

(i) fishing or processing or transporting fish from fishing grounds; or

(ii) provisioning, servicing repairing or maintaining any vessels of a fishing fleet while at sea;

(d) "flag State" means the State whose flag a vessel is entitled to fly;

(e) "highly migratory fish stocks" means stocks of fish species listed in Annex I to the United Nations Convention on the Law of the Sea;

(f) "Parties" means parties to this Convention;

(g) "port State" means a State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;

(h) "regional or subregional fisheries conservation arrangement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;

(i) "regional or subregional fisheries conservation organization" means a regional or subregional organization involving two or more States, including the relevant coastal State or States, which adopts conservation and management

measures with respect to straddling fish stocks or highly migratory fish stocks on the high seas;

(j) "regulatory area" means an area of the high seas in respect of which a regional or subregional fisheries conservation organization adopts conservation and management measures or to which a regional or subregional fisheries conservation arrangement applies;

(k) "State" includes any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention;

(l) "straddling fish stocks" means stocks occurring both within the exclusive economic zone of a coastal State and in an area beyond and adjacent to that zone and includes stocks of associated species.

Article 2

Application

This Convention shall apply to straddling fish stocks and highly migratory fish stocks on the high seas.

Article 3

Objective

The objective of this Convention is to establish, in accordance with the principle of sustainable development, an effective regime for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, consistent with the United Nations Convention on the Law of the Sea.

PART II

CONSERVATION AND MANAGEMENT

Article 4

Conservation and management measures

Parties shall implement conservation and management measures

(a) Which shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence

of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(ii) Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;

(iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks on the high seas;

(iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States;

(v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones;

(b) And shall include:

(i) Continuous scientific review and assessment of the state of stocks;

(ii) The establishment of total allowable catches and quotas, as appropriate;

(iii) Provisions to ensure that fishing effort (number of vessels and fishing days) is commensurate with total allowable catches and quotas, as appropriate;

(iv) Establishment of minimum mesh sizes;

(v) Promotion of the development and use of selective fishing gear and practices that minimize waste;

(vi) Provisions to ensure that fishing activities on the high seas minimize incidental catch;

(vii) Full, detailed, accurate and timely reporting of catches and effort;

(viii) Provisions to ensure effective surveillance and control of fishing activities.

Article 5

Precautionary measures

Parties shall, in order to achieve the objective of this Convention, apply appropriate precautionary measures. Where there are threats of serious or irreversible damage to straddling fish stocks or highly migratory fish stocks,

the lack of full scientific certainty shall not be used as a reason to postpone such measures.

Article 6

Provision of information

Parties shall ensure that fishing vessels entitled to fly their flag provide them with such information on their operations as may be necessary to enable them to fulfil their obligations under this Convention and, in particular, shall cooperate with other Parties to:

(a) Promote enhanced collection on the high seas of data necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks;

(b) Develop and share analytical and predictive tools such as stock assessment and bio-economic models;

(c) Exchange on a regular basis up-to-date data and information necessary for stock assessment;

(d) Establish or expand appropriate monitoring and assessment programmes.

PART III

SURVEILLANCE AND CONTROL

Article 7

Surveillance and control measures

In order to ensure effective conservation and management, Parties shall take measures to ensure effective surveillance and control which, with due regard to the particular circumstances in individual regions, shall include:

(a) A uniform and internationally recognizable vessel marking system, such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) Regular inspections at sea;

(c) Aerial surveillance;

(d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;

(e) On-board observers;

(f) Regular hailing of catches, either by radio or using computer technology;

(g) Catch verification and validation through dockside monitoring of landed catches and market statistics;

(h) Arrangements with the relevant coastal State or States for the use or sharing of their resources for aerial surveillance, inspection platforms and observers, with a view to minimizing costs for both the regional fisheries conservation organization or arrangement and the coastal State or States concerned;

(i) Provision for appropriate resources to monitor vessel location and catches, and to detect infractions of international conservation and management measures, including those in respect of quotas;

(j) Authorization of fishing effort commensurate with quota or catch shares;

(k) Licensing of vessels for specific quotas;

(l) Rules for the provision of accurate and timely catch and effort data.

PART IV

ENFORCEMENT

Article 8

Flag State authorization

With respect to fishing vessels entitled to fly their flag, Parties shall:

(a) Establish and operate a licensing system to authorize such vessels to fish on the high seas and require them to carry licences when fishing on the high seas;

(b) Provide for information to be contained in such fishing licences sufficient to enable them to exercise effectively their responsibilities under this Convention in respect of such vessel;

(c) Prohibit in national legislation fishing on the high seas by such vessels without licences;

(d) Take measures to ensure that fishing vessels entitled to fly their flag operating in an area of the high seas adjacent to the exclusive economic zone of a coastal State do not fish in that exclusive economic zone in contravention of the laws and regulations of the coastal State.

Article 9

Offences by vessels or nationals

Parties shall take such measures as may be necessary to ensure that fishing vessels entitle to fly their flag or their nationals do not engage in any activity which undermines the effectiveness of international conservation and management measures, including:

(a) The enactment of national legislation, making it an offence to engage, in any regulatory area, in any activity which undermines the effectiveness of international conservation and management measures;

(b) The investigation of suspected offences;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature and gravity of the offence;

(d) The establishment of penalties which shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Convention and to deprive offenders of the benefits accruing from their illegal activities, including refusal, suspension or withdrawal of licences as well as fines related to the value of the fishing vessel, seizure or forfeiture of the catch, fishing equipment or vessel;

(e) The expeditious prosecution of the owners, operators or masters of fishing vessels entitled to fly their flag or of their nationals where there is sufficient evidence that they have undermined the effectiveness of international conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

Article 10

Flagging

Parties shall take such measures as may be necessary to prevent the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures and shall, to that end, cooperate, inter alia, through the appropriate international organizations.

Article 11

Port State enforcement

Each Party shall, to the extent practicable, exercise its right under international law to inspect the documents of fishing vessels, other than vessels entitled to fly its flag in its ports or offshore terminals. Such inspection shall also be carried out at the request of any other Party. If, as a result of such inspection or other evidence, that port State has reasonable grounds to believe that the fishing vessel has undermined the effectiveness of

international conservation and management measures or has fished on the high seas without a licence, it shall so inform the flag State and the requesting Party, if any, and may detain the fishing vessel until such time as it agrees with the flag State on the action to be taken.

Article 12

International cooperation

In addition to other measures provided for in this Convention, Parties shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Convention. They shall, in particular:

(a) Assist each other in the determination of the registry of fishing vessels reported to have engaged in activities undermining the effectiveness of international conservation and management measures, based on information to which they have access;

(b) Establish and maintain effective arrangements for obtaining, preserving and transmitting evidence to prosecuting authorities;

(c) Upon request of Party which is a port State, provide information to which they have access and all other reasonable assistance.

Article 13

Boarding, inspection and arrest on the high seas

The appropriate authorities of any Party may board and inspect a fishing vessel entitled to fly the flag of another Party sighted in a regulatory area, and when they have sufficient evidence that the vessel has undermined the effectiveness of international conservation and management measures, may arrest it. The arresting Party shall notify the flag State of the action taken and shall detain the vessel pending appropriate action by the flag State or, with the latter's consent, by the arresting Party.

Article 14

Enforcement against unregistered vessels

When a fishing vessel not entitled to fly the flag of any State is sighted fishing in a regulatory area, the appropriate authorities of any Party may take such action as is necessary to arrest the vessel and provide for prosecution. The arresting Party shall detain the crew only for the time necessary to bring the arrested vessel to the nearest port of that Party and to complete its investigations. It shall expeditiously carry out all relevant investigations and judicial proceedings. It shall as soon as practicable inform the State or States of which the crew are nationals of the action taken.

Article 15

Enforcement against vessels that conceal their identification

When a fishing vessel is sighted fishing in a regulatory area by the appropriate authorities of a Party which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that Party may take such action as is necessary to board the vessel, inspect and, if appropriate, arrest it, and to detain the vessel until such time as it is identified and the registry to which it belongs is determined. If the vessel is found to be entitled to fly the flag of a Party, it may be further detained pending appropriate action by the flag State or, with the latter's consent, by the arresting Party. If the vessel is found to be unregistered, the provisions of article 14 shall apply.

PART V

REGIONAL FISHERIES ORGANIZATIONS AND ARRANGEMENTS

Article 16

Regional circumstances

The provisions of this Part shall be applied with due regard to the particular circumstances in individual regions.

Article 17

Minimum standards

Parties which participate in regional fisheries conservation organizations or arrangements shall take action to have such organizations or arrangements:

(a) Adopt conservation and management measures as set out in Part II;

(b) Adopt surveillance and control measures as set out in Parts III and IV;

(c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue, considering, as appropriate, the adoption of the procedure outlined in article 25 for that purpose or its use as a model. Parties which do not participate in the relevant organization or arrangement shall be entitled to invoke or to submit voluntarily to any settlement procedure so established, in which case they shall be bound by the resulting decision.

Article 18

New participants

Parties which participate in a regional fisheries conservation organization or arrangement shall, where appropriate, encourage States with an interest in a high seas fishery which it regulates to participate in such organization or arrangement. Such Parties may:

(a) As part of a new participant's contribution to the conservation measures of such organization or arrangement:

(i) Make allocations of any stock they regulate to new participants subject to a waiting period;

(ii) In cases where stocks are depressed, make allocations of any stock they regulate to new participants only when the total allowable catch exceeds a threshold level determined for that purpose by the organization or under the arrangement;

(iii) In cases where stocks are at appropriate levels and fully allocated, make allocations of any stock they regulate to new participants subject to quotas being relinquished by existing participants;

(b) In cases where quotas are relinquished by existing participants, decide to reallocate those quotas to new participants, provided that special consideration shall be given to a coastal State with regard to straddling fish stocks or highly migratory fish stocks occurring within both its exclusive economic zone and the regulatory area and, secondarily, to developing States.

Article 19

Enclosed and semi-enclosed seas

In establishing a regional fisheries conservation organization or arrangement in respect of an enclosed or semi-enclosed sea comprising, inter alia, an exclusive economic zone or zones extending up to a limit of 200 nautical miles, Parties shall provide for the consent of the coastal State or States concerned in the establishment of all conservation and management measures.

Article 20

Unregulated areas of the high seas

In areas of the high seas not subject to international conservation and management measures, Parties which are coastal States and other Parties which harvest straddling fish stocks or highly migratory fish stocks in those areas shall, as appropriate, cooperate to establish or participate in a fisheries conservation organization or arrangement on a bilateral or multilateral basis.

Article 21

International assessment

Parties shall cooperate to allow the international community to monitor and assess the activities of regional fisheries conservation organizations and arrangements. For this purpose they shall take action to have such organizations and arrangements submit annual reports to the Committee on Fisheries of FAO. They shall also request FAO to prepare an annual compendium of these reports, which would in addition identify the issues outstanding and formulate recommendations as appropriate.

PART VI

DEVELOPING COUNTRIES

Article 22

Enhancement of the ability of developing countries to fulfil their obligations

Parties shall cooperate to enhance the ability of developing countries to fulfil the obligations provided for in this Convention by improving their capabilities, including the financial, scientific and technological means at their disposal.

Article 23

Technical assistance to developing countries

Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties which are developing countries. Such assistance should be provided, inter alia, in respect of conservation and management, surveillance and control and enforcement, thereby enhancing the ability of Parties which are developing countries to obtain the full social and economic benefits from sustainable utilization of marine living resources subject to their jurisdiction.

PART VII

NON-PARTIES

Article 24

Non-parties

1. Parties shall encourage States not parties to this Convention to adhere to it and shall encourage non-parties to adopt laws and regulations consistent with its provisions.

2. Parties shall cooperate in a manner consistent with this Convention and international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. Parties shall exchange information amongst themselves with respect to activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of international conservation and management measures.

PART VIII

SETTLEMENT OF DISPUTES

Article 25

Settlement of disputes

1. In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other peaceful means of their own choice.

2. If, thirty days following receipt of notification by one Party to one or more other Parties that a dispute exists between or among them, the Parties concerned have not been able to settle their dispute through the means referred to in paragraph 1:

(a) Where the United Nations Convention on the Law of the Sea has entered into force for all Parties concerned, Part XV of that Convention shall apply;

(b) Where the United Nations Convention on the Law of the Sea has not entered into force for all Parties concerned, if they do not agree to settle the dispute in accordance with Part XV of that Convention the dispute shall be submitted, at the request of any concerned Party, to arbitration in accordance with the provisions of the Annex to this Convention.

Annex

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General of the United Nations. The other Party or Parties involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.

2. The tribunal shall be composed of three members. Parties concerned shall, within ten days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two Parties are involved in the dispute, the Parties sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.

3. If the members of the tribunal are not appointed pursuant to paragraph 2 within the ten-day period it specifies, the Secretary-General shall, within ten days, appoint them.

4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within ten days of the appointment of the second member to appoint the third, the Secretary-General shall, within ten days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the Parties involved in the dispute.

5. Within ten days of the formation of the tribunal, the Parties concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all Parties concerned.

6. An oral hearing shall be convened at a place and on a date to be determined by the tribunal, within thirty days following the formation of the tribunal.

7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the tribunal.

8. The tribunal shall communicate its decision to all Parties concerned within thirty days of the end of the oral hearing. Reasons in writing shall be communicated to the Parties concerned within sixty days of the decision.

9. Once a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the Parties concerned or to prevent damage to the stocks in question, pending a final decision.

10. The tribunal shall adopt such rules of procedure as it deems necessary.

EXPLANATORY NOTE

This draft Convention draws on various sources, including the United Nations Convention on the Law of the Sea, other international agreements, Agenda 21, the draft FAO Flagging Agreement and EC Regulations, as indicated below:

Article	Source
1 (a)	Cf. definition of "international conservation and management measures" in the Draft Agreement on the Flagging of Vessels Fishing on the High Seas to Promote Compliance With Internationally Agreed Conservation and Management Measures, FAO document CL 103/LIM/6, June 1993 (the Draft FAO Flagging Agreement)
1 (g)	Cf. article 218 of the United Nations Convention on the Law of the Sea (UNCLOS)
1 (l)	Cf. article 63 (2) of UNCLOS
4 (a) (i)	Cf. article 119 (1) (a) of UNCLOS
4 (a) (ii)	Cf. article 119 (1) (b) of UNCLOS
4 (b) (i)	Cf. UNCLOS article 119 (2); EC regulation 3760, article 16; article VI, paras. (1) (b) and (3) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries
4 (b) (iii)	Cf. EC regulation 3927, articles 4 (1) and 5 (2); Northwest Atlantic Fisheries Organization (NAFO) Measures, Part II, B, schedules IV and V
4 (b) (iv)	Cf. EC regulation 3927, article 4 (2); Agenda 21, para. 17.46 (c); cf. NAFO Measures, Part II, A, C and Schedule VI
4 (b) (v)	Cf. EC regulation 3927, article 4 (3); Agenda 21, paras. 17.46 (c) and 17.50; cf. NAFO Measures, Part I 4 (a)
4 (b) (vii)	Cf. EC regulation 3760, article 12 (1); and NAFO measures, Part IV 1 (i)
5	Inspired by: Bergen Ministerial Declaration (article 7): Bergen Ministerial Declaration on Sustainable Development in the ECE Region, adopted at the Regional Conference on Action for a Common Future organized by the Government of Norway in cooperation with the United Nations Economic Commission for Europe (ECE) held at Bergen, Norway, from 14 to 16 May 1990. Ministers from 34 countries in the ECE region and the Commissioner for the

Environment of the European Community attended the Bergen Conference;

Rio Declaration on Environment and Development (principle 15) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

United Nations Framework Convention on Climate Change (article 3, para. 3) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

Convention on Biological Diversity (preamble), adopted at the United Nations Conference on Environment and Development, held at Rio de Janeiro, on 14 June 1992;

Treaty on European Union (article 103r, para. 2) signed at Maastricht, Netherlands, on 7 February 1992.

6 Cf. draft FAO Flagging Agreement, article III (8)

6 (c) Cf. Agenda 21, para. 17.56 (b)

6 (d) Cf. Agenda 21, para. 17.56 (d)

7 (a) Cf. draft FAO Flagging Agreement, article III (7); NAFO Measures, Part III A also refer

7 (e) Cf. EC regulation 3928/92 and NAFO Measures, Part VI

7 (j) Cf. EC regulation 3760/92, article 4 (2) (d) and (e)

8 Cf. EC regulation 3760/92, article 5, and draft FAO Flagging Agreement, article III, paras. (2) and (4)

9 (d) Cf. draft FAO Flagging Agreement, article III (9)

10 Cf. Report of the 103rd Session of the FAO Council, Rome, 14-25 June 1993, paras. 63-72

11 Cf. Memorandum of Understanding on Port State Control, Paris, 20 January 1982, section 3.1; for port State enforcement in the context on pollution, article 218 of UNCLOS refers

12 Cf. draft FAO Flagging Agreement, article VI (3)

13 Cf. article V of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, in force 16 February 1993. Parties are Canada, Japan, Russian Federation and the United States

14 Cf. article 92 of UNCLOS

20 Paragraph 17.59 of Agenda 21 and article 118 of UNCLOS refer

22 Paragraph 17.48 of Agenda 21

23 Cf. draft FAO Flagging Agreement, article VIII

24 Cf. draft FAO Flagging Agreement, article IX

25 Cf. Part XV of UNCLOS; article 33 of the Statute of the International Court of Justice refers

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